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INTERNATIONAL ARRANGEMENTS FOR TRANSFER OF TECHNOLOGY

Note by the secretariat

CONTENTS

I. Main focus of discussions
II. Summary of Outcome
III. Comments by UNCTAD member States on the experts' recommendations

1. The Expert Meeting on International Arrangements for Transfer of Technology was held in Geneva from 27 to 29 June 2001. It was aimed at identifying the best practices for access to and measures to encourage transfer of technology with a view to capacity-building in developing countries, especially in least developed countries.

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I. Main focus of discussions

2. The discussions were focused on analysing the implementation of several dozen international instruments that include provisions for enhancing the transfer of technology to developing countries, particularly least developed countries (LDCs), as well as their technological capacities. It was noted that implementation issues need further discussions. This is in line with paragraph 117 of the Bangkok Plan of Action (TD/386), which calls upon UNCTAD to "analyse all aspects of existing international agreements relevant to transfer of technology", and paragraph 128, which states that "In the area of transfer of technology, UNCTAD should examine and disseminate widely information on the practices for access to technology".

II. Summary of Outcome

3. The Outcome of the meeting (document TD/B/COM.2/EM.9/L.1) notes that more needs to be done to successfully implement international instruments, including with respect to enhancing the transfer of technology to developing countries, in particular to the LDCs, as well as their technological capabilities.

4. The Outcome contains a list of best practices that could contribute to generating favourable conditions and opportunities for transfer of technology and capacity-building. These include:

- International instruments with built-in implementation mechanisms, including financial provisions and monitoring arrangements; these have a promising implementation record in the area of environmental protection and should be emulated. They could serve as a model in other areas such as infrastructure, health, nutrition and telecommunications;

- Making the Agreements on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) more conducive to transfer of technology, in accordance with its Articles 7, 8 and 40, including by reviewing its impact on transfer of technology and capacity-building;

- Establishing a special trust fund, based on successful models, to promote research and development (R&D) in developing countries and other activities in the area of technology with a view to assisting developing countries in benefiting from their various international commitments;

- Designing measures and specific incentives for home-country enterprises, including fiscal and other incentives, to promote transfer of technology, especially through foreign direct investment (FDI) in developing countries. In this connection, the monitoring of implementation of the commitments in Article 66.2 of the TRIPS Agreement could contribute to building a sound and viable technological base in LDCs;

- Creating a hospitable domestic regulatory environment for foreign investment, together with intellectual property protection, improves access to technology. It has been observed that the transfer of technology is often most successful when effected by means of investment, especially FDI.

5. For those purposes, the experts proposed that UNCTAD should:

- Provide assistance to developing countries, particularly LDCs, in strengthening their capacity to discuss and to negotiate technology transfer provisions in international instruments;

- Further explore ways and means for effective implementation of international commitments in the area of transfer of technology and capacity-building;

- Compile an illustrative list of home-country measures that might fulfil the requirements of Article 66.2 of the TRIPS Agreement;

- Assist interested countries by undertaking a needs assessment with regard to the interface between commitments in the TRIPS Agreement and national implementation requirements with a view to adjusting the TRIPS standards to local innovation needs and to fostering their pro-competitive implementation.

6. As requested, UNCTAD member States provided their policy comments on the Outcome. These are summarized below for consideration by the Commissions

III. Comments by UNCTAD member States* on the experts' recommendations

7. Comments by UNCTAD member States focused on the following areas:

Elements of the Outcome that would require follow-up actions

a. International instruments with built-in implementation mechanisms, including financial provisions and monitoring arrangements

8. Wide dissemination of this type of instrument is needed, as well as further surveys on their performance, in order to extend them to areas other than environmental protection. Models relevant in this connection include the Montreal Protocol, which includes provision for environment-related transfer of technology, and the Convention on Biological Diversity (CBD), which contains a mechanism for financing transfer of technology to the developing countries.

b. Ensuring access, in particular that of developing countries, to technological information on a competitive basis

9. Implementation of feasible and useful mechanisms is required in order to ensure access to technological information on fair and equitable terms and conditions. Such information should be available in various languages and should be disseminated, especially in rural areas, together with successful country examples, with the aim of popularizing available technologies through exhibitions, seminars and workshops.

c. Taking measures to prevent anti-competitive practices by technology rights holders or practices that unduly impede the transfer and dissemination of technology

10. Compilation of a list of anti-competitive practices and their effects, as well as existing legislation aimed at preventing such practices, is necessary in order to develop relevant legislation for developing countries.

d. Making the TRIPS Agreement more conducive to transfer of technology

11. Implementing ways of disseminating the benefits of the Agreement in the developing countries is required, as well as designing projects for evaluating all aspects of the transfer of technology.

e. Setting up interministerial coordination committees at the national/regional level concerning the interface between commitments in the TRIPS Agreement and national implementation requirements

12. The establishment of these committees is needed in order to adjust TRIPS standards to local innovation needs and harmonize the TRIPS Agreement with other international legal instruments related to biodiversity such as the CBD and the Food and Agriculture Organization's Undertaking on Plant Genetic Resources.

f. Establishing a special trust fund to promote R&D in developing countries and other activities in the area of technology

13. Establishment of a trust fund on the basis of successful models is welcome. Such a fund should constitute a suitable option for developing countries, in particular LDCs. Its feasibility needs to be evaluated in depth, taking into account the restrictions faced by the developing countries. Other concerns of developing countries relate to financing transfer of technology.

g. Supporting capacity-building, particularly in the LDCs

14. The establishment of specific projects and programmes for supporting capacity-building is recommended, in particular in the areas of human resources, institutional capacities for R&D and assessment of technology needs. Such projects and programmes should help to create a science and technology infrastructure on a cooperative basis.

h. Creating a hospitable domestic regulatory environment for foreign investment and transfer of technology

15. Mechanisms for creating a hospitable domestic regulatory environment for FDI and transfer of technology should be complemented with international technical cooperation and with scientific and technology development programmes in developing countries. UNCTAD would contribute by providing a forum for discussing and exchanging experiences with a view to enhancing technical cooperation and establishing national regulatory frameworks favourable to FDI.

Proposals on a Work Programme to implement the recommendations

a. Designing measures and specific incentives for home-country enterprises to promote transfer of technology in the developing countries

16. It is proposed that an illustrative list of home-country measures and specific incentives for enterprises be compiled and disseminated. Their aim would be to promote transfer of technology that would fulfil the requirements of Article 66.2 of the TRIPS Agreement with a view to their inclusion in future commitments aimed at enhancing the technology base in the developing countries. Public institutions have an important role to play in encouraging the activities of the private sector in the field of technology.

b. Strengthening developing countries' capacity for discussing and for negotiating technology transfer provisions in international instruments

17. Developing countries, particularly LDCs, should be assisted in strengthening their capacity to discuss and negotiate technology transfer provisions.

Specific technical assistance programmes arising from the Outcome

18. It was proposed that:

(a) Financial assistance be provided to developing countries, especially LDCs, for bearing the costs of reforming their administrative and legal frameworks in order to apply international intellectual property standards and comply with the commitments under the TRIPS Agreement;

(b) Assistance be provided for designing specific arrangements to support transfer of technology, including linkages between R&D institutions and productive sectors;

(c) Forums be orgainzed for discussing specific arrangements concerning implementation of international commitments, including provisions for protection of intellectual property rights and transfer of technology;

(d) Assistance be provided for carrying out a needs assessment of transfer of technology, particularly in LDCs, including identification of the barriers to transfer of technology, and that seminars/workshops on legal issues be organized at the national and regional levels.

19. Considering the emphasis placed by the experts on international arrangements for transfer of technology, the Commission on Investment, Technology and Related Financial Issues may wish to consider, at its sixth session, the Outcome of the Expert Meeting, taking into account best practices that can contribute to creating conditions and opportunities for transfer of technology and capacity-building. It may also wish to consider the availability of information about such arrangements and best practices required for sustained multilateral cooperation, and its dissemination in various United Nations Languages.